SUNGAI LIDONG CO-OPERATIVE LAND DEVELOPMENT SOCIETY LTD

v.

LIM JOK TECK & ANOR

HIGH COURT SABAH & SARAWAK, SANDAKAN
YEW JEN KIE JC
[CIVIL SUIT NO: CSS 22-31-2008]
25 MAY 2009

UNINCORPORATED ASSOCIATIONS: *Societies - Co-operative society - Action - Jurisdiction - Whether High Court the correct forum to try plaintiff's action - Dispute between co-operative society and its members touching on business of the co-operative society - Whether fell within purview of s. 82 Co-operative Societies Act 1993 - Whether dispute should be properly referred to Commission - Co-operative Societies Act 1993, s. 82(3)(c) - Rules of the High Court 1980, O. 12 r. 7*

CIVIL PROCEDURE: *Jurisdiction - High Court or Tribunal - Co-operative society - Dispute between co-operative society and its members touching on business of the co-operative society - Whether fell within purview of s. 82 Co-operative Societies Act 1993 - Whether dispute should be properly referred to Commission - Co-operative Societies Act 1993, s. 82(3)(c) - Rules of the High Court 1980, O. 12 r. 7*

CIVIL PROCEDURE: *Pleadings - Setting aside - Application to set aside writ under O. 12 r. 7 Rules of the High Court 1980 for want of jurisdiction - Whether High Court the correct forum to try plaintiff's action - Dispute between co-operative society and its members touching on business of the co-operative society - Whether fell within purview of s. 82 Co-operative Societies Act 1993 - Whether dispute should be properly referred to commission - Co-operative Societies Act 1993, s. 82(3)(c) - Rules of the High Court 1980, O. 12 r. 7*

The defendants, by summons in chambers made under O. 12 r. 7 of the Rules of the High Court 1980, sought an order that this action and all subsequent proceedings herein be set aside on the ground that this court was not the correct forum to try the plaintiff's action. Briefly, the plaintiff was a registered co-operative society and the defendants were members of the plaintiff. In 1979, the plaintiff agreed to sell the plaintiff's land ('the land') to the first defendant's company ('the company') but it was prohibited by the Malaysia Co-Operative Societies Commission because all lands

belonging to the plaintiff could only be transferred to its members after they were fully cultivated and developed. Consequently, at the suggestion of the then chairman of the plaintiff, the first defendant and his partners joined as members of the plaintiff and they fully cultivated and developed the land. Having done so, the plaintiff, its committee and its members unanimously allowed the land to be sub-divided and transferred to the first defendant and his partners and the proposed sub-division and transfer of respective lots to the first defendant and his partners had also been approved by the relevant authorities. Pending the issuance of the title deed of the land, the constitution of the committee of the plaintiff changed. The chairmanship of the plaintiff was taken over by one Ajan Datu Tawil ('Ajan'). The plaintiff took possession of the land. The defendants' attempt to maintain the *status quo* pending adjudication of the matter at the Tribunal did not succeed. In the meantime, the plaintiff commenced the present action against the defendants for declaration that the land was actually belonging to the plaintiff and for compensation due to the defendants' failure to pay the alleged rent and commission under the rental agreement. The core issue in this application was whether the Tribunal or this court shall have jurisdiction to try the dispute between the plaintiff and the defendant.

Held:

(1) As the dispute was between the plaintiff, a co-operative society and the defendants, its members touching on business of the co-operative society, on the authority of *M Arulandan v. Malaysian Co-operative Insurance Society Ltd*, it fell within the purview of s. 82 of the Co-operative Societies Act 1993 ('the Act') and therefore the dispute should be properly referred to the commission. The court was not the proper forum to try the dispute between the plaintiff and the defendants. The writ should accordingly be set aside. (para 20)

(2) On the authority of *MBF Finance Berhad v. Tee Kee Tat & Ors*, where a dispute involved members of the co-operative society touching on the business of a co-operative society, it was mandatory to refer the dispute to the commission. Section 82(3)(c) of the Act is one of the three options as to how the dispute may be resolved. It is only where the commission has requested the parties to refer their dispute to court will the

claimants be clothed with the capacity to initiate an action in the High Court and the role of the High Court shall be at the second instance. (paras 25 & 27)

(3) The fact that the plaintiff was seeking declaratory relief did not mean that the plaintiff could circumvent the requirement of referring the dispute to the commission under s. 82 of the Act. It is important not to equate a declaration or an order for specific performance or injunction with the Award of the Tribunal. The award of the Tribunal is a creature of the Act and is independent from the Specific Relief Act 1950 or the Courts of Judicature Act 1964. The Tribunal does not require any empowerment from these latter statutes to decide on the affairs of its own people. (paras 35 & 40)

(4) There was no ouster of court's jurisdiction. Pursuant to s. 82 of the Act, if the court finds that the dispute is between members of a co-operative society or between members of a co-operative society and the co-operative which touches on the business of the co-operative society, the role of the court pertaining to dispute in such instances shall be at the second instance when the dispute is referred to it by the commission or when there is an appeal against the award of the Tribunal. (para 47)

Case(s) referred to:

Cheah Foong Chiew v. Lembaga Jurutera Malaysia [1999] 3 CLJ 242 CA ***(refd)***

Chin Yew Loy Holdings Sdn Bhd v. Au Metalvest Malaysia Sdn Bhd [2002] 6 CLJ 141 HC ***(refd)***

Dato' Param Cumaraswamy v. MBF Capital Bhd & Anor [1998] 1 CLJ 1 CA ***(refd)***

Hj Bujang Mohidin Jol & Ors v. Koperasi Koperkasa Bhd [2005] MLJU 545 ***(refd)***

ISC Technology Sdn Bhd v. Premium Systems Technology Pte Ltd [2008] 7 CLJ 239 HC ***(refd)***

Koperasi Pekerja-Pekerja Stevedoring Pelabuhan Bhd, Ebnusama Ali & Ors [1996] MLJU 544 ***(refd)***

Loo Choo Teng & Anor v. Cheok Swee Lee & Ors [2000] 2 CLJ 389 CA ***(refd)***

M Arulandan v. Malaysian Co-operative Insurance Society Ltd [1987] 1 CLJ 43; [1987] CLJ (Rep) 44 SC ***(refd)***

Madhava Rao v. Surya Rao [1954] AIR Madras 103 ***(refd)***

MBF Finance Berhad v. Tee Kee Tat & Ors [1994] 4 CLJ 564 HC ***(refd)***

PP v. Mohd Amin & Ors [2001] 1 CLJ 75 HC ***(refd)***

Professor Dr A Kahar Bador & Ors v. N Krishnan & Ors (No 2) [1983] MLJ 412 HC ***(refd)***
Tan Chin Swee & Anor v. Seri Ampangan Realty Sdn Bhd [2005] 1 CLJ 865 HC ***(refd)***
Tan Sri Hj Othman Saat v. Mohamed Ismail [1982] 2 MLJ 177 ***(refd)***
Thanaraj Manikam & Ors v. Lower Perak Tamil Co-operative Society [2003] 1 LNS 148 HC ***(refd)***
Tharmalingam v. Sambanthan [1960] 1 LNS 143 HC ***(refd)***

Legislation referred to:
Co-Operative Societies Act 1993, ss. 49(1), 82(1), (3)(c), 83(1)
Co-Operative Societies Ordinance No 3 1958 (Sabah), s. 51(1), (2)
Rules of the High Court 1980, O. 12 r. 7
Specific Relief Act 1950, s. 41

For the plaintiff - Choong Oi Ming; M/s J Marimuttu & Partners
For the defendant - Tsang Hieng Yee; M/s VK Liew & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Yew Jen Kie JC:

Introduction

[1] By summons in chambers dated 27 November 2008 made under O. 12 r. 7 of the Rules of High Court 1980, the defendants seek an order that this action and all subsequent proceedings herein be set aside on the ground that this court is not the correct forum to try the plaintiff's action.

Background Facts

[2] The plaintiff is a registered co-operative society. The defendants are members of the plaintiff. At the end of year 1979 the plaintiff agreed to sell the plaintiff's land held under P.L. 08622274 of 243.62 acres ("the Land") to the 1st defendant's company named Yaw Lim Plantations Sdn. Bhd. ("the company") at the price of RM36,450 but it was prohibited by the Malaysia Co-Operative Societies Commission (then called Jabatan Pembangunan Koperasi"). This is because all lands belonging to the plaintiff could only be transferred to its members after they were fully cultivated and developed.

[3] Consequently at the suggestion of Junaidi bin Datu Tawil ("Junaidi"), then chairman of the plaintiff, the 1st defendant and his partners joined as members of the plaintiff and they fully cultivated and developed the Land. Having done so the plaintiff, its committee and its members unanimously allowed the Land to be sub-divided and transferred to the 1st defendant and his partners and the proposed sub-division and transfer of respective lots to the 1st defendant and his partners had also been approved by the relevant authorities. However, the sub-division and transfer could not be effected at the material time as the title deed for the Land had yet to be issued by the Jabatan Tanah dan Ukur.

[4] Pending the issuance of the title deed of the Land, the constitution of the committee of the plaintiff changed. The Chairmanship of the plaintiff was taken over by one Ajan bin Datu Tawil ("Ajan"). The plaintiff took possession of the Land. The defendants' attempt to maintain the *status quo* pending adjudication of the matter at the Tribunal did not succeed.

[5] In the meantime the plaintiff commenced the present action against the defendants for declaration that the Land is actually belonging to the plaintiff and for compensation due to the defendants' failure to pay the alleged rent and commission under the rental arrangement.

Issues

[6] The core issue in this application is whether the Tribunal or this court shall have the jurisdiction to try the dispute between the plaintiff and the defendant. Related to this issue is whether the dispute between the plaintiff and the defendants are disputes between the co-operative society and its members touching on business of the co-operative society.

The Law

[7] Section 82 of the Co-operative Societies Act 1993 ("the Act") provides for the settlement of disputes concerning co-operative society and its members. It states:

> (1) If a dispute touching the constitution, by-laws, election of officers, conduct of general meetings, management or business of a co-operative society arises:
>
> ...

A

(b) between a member, past member, or persons claiming through a member, past member or deceased member, and the co-operative society, its Board, or any officer of the co-operative society.

...

B

Such dispute shall be referred to the Commission for decision.

(2) ...

C

(3) The Commission may, on receipt of a reference under subsection (1):

(a) decide the dispute by itself;

(b) refer the dispute to an arbitrator or arbitrators for disposal;

D

(ba) refer the dispute to the tribunal established under section 83; or

(c) require the parties concerned to refer the dispute to a court.

E

[8] Section 83 provides:

(1) The Minister may, on the recommendation of the Commission, establish a tribunal to perform the functions specified in subsection (2)

F

(2) ...

(3) ...

G

(4) Upon the establishment of a tribunal under subsection (1), all disputes within the meaning of subsection 82(1) and 82(2):

(a) arising after such establishment; or

(b) ...

H

may be referred to such tribunal by the Commission.

[9] My understanding from reading ss. 82 and 83 together is that as long as (1) any dispute touching the business of a co-operative society arises (2) between the members of a

I

co-operative society and the co-operative, its board or its any other officers, the same dispute must be referred to the commission who shall decide on the options which are available under sub-s. 82(3). A

[10] The purpose of ss. 82 and 83 is obviously to enable the commission to settle disputes relating to internal affairs of the society first before such dispute is allowed to come to court. (see: *Professor Dr. A. Kahar Bador & Ors v. N. Krishnan & Ors (No. 2)* [1983] MLJ 412 (HC)) B

[11] The normal rule is not for the court to intervene but to allow the domestic tribunal to proceed and decide the matter. (see: *Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [1999] 3 CLJ 242 (CA)) C

[12] Civil courts always favour exhaustion of domestic remedies provided under the statute before going to court. (see *M Arulandan v. Malaysian Co-operative Insurance Society Ltd* [1987] 1 CLJ 43; [1987] CLJ (Rep) 44 (SC) which referred to *Tharmalingam v. Sambanthan* [1960] 1 LNS 143 HC). D

[13] It has been held that the phrase "any dispute touching the business of a co-operative society" must be interpreted widely. In *M. Arulandan*, *supra*, in construing the words "touching the business of a society" appearing in s. 49(1) of the Co-operative Societies Act of Malaysia (*pari material* to s. 82 (1) of the Act), the Supreme Court referred to the case of *Madhava Rao v. Surya Rao* [1954] AIR Madras 103 which dealt with the meaning of the words "touching the business of a society" which appeared in certain parts of the Madras Co-operative Societies Act (*pari material* with s. 49(1) of the Co-Operative Societies Act of Malaysia) where it was held: E F G

> The words "touching the business of a society" must be given their full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word "touching" it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. The word "touching" was clearly not intended to restrict the meaning of the word business; it was designed to enlarge its scope. Similarly, the word "business" is not used in a narrow sense. H I

A The above decision was followed by *Thanaraj a/l Manikam & Ors v. Lower Perak Tamil Co-operative Society* [2003] 1 LNS 148 HC; *Hj. Bujang Mohidin bin Jol & Ors v. Koperasi Koperkasa Bhd* [2005] MLJU 545.

B **[14]** *Thanaraj Manikam*, *supra*, Kang Kwee Kee J (as his Lordship then was), after referring to the passage in *M. Arulandan* quoted above, went on to hold thus:

> It is the province of the legislature to enact statutes, and of the court to construe the statutes which the legislature has enacted. It
C is clear to me that given the wide meaning that has been ascribed to the term by the Supreme Court in the case cited, the disputes that arose from the sale and purchase of the lands by the plaintiff members from the defendant co-operative society were disputes touching on the business of the society.

D **Does The Dispute Herein Fall Within The Purview Of s. 82 Of The Act?**

[15] It is the contention of the plaintiff that the plaintiff's claim herein is not a dispute as between the members or indeed
E touching on the business of the co-operative society and therefore the provisions of the Act do not apply. It is submitted that by the 1st defendant's own averment, the 1st defendant and the 15 partners became members so that they could circumvent the rules which prohibited the sale of the Land to the 1st defendant's
F company, Yew Lim Plantation Sdn. Bhd. Therefore, the crux of the dispute is between the 1st defendant's company Yew Lim Plantation Sdn Bhd camouflaged in the person of the 1st defendant and his partners. The dispute is whether the defendants' company or the defendants themselves are lawfully
G entitled to purchase the Land. It is submitted that this is neither a dispute as between the members of the plaintiff nor does it touch on the business of the society.

[16] It is next submitted that the whole purported transaction
H impinges on illegality and cannot be sustained. Indeed, the issue as to whether the plaintiff intended or entered into a sale agreement with the company (which is not a member of the plaintiff) for the sale of the Land is a matter that can only be properly determined by the court and not any tribunal.

I

[17] A careful perusal of the plaintiff's statement of claim shows that the plaintiff's pleaded case is that they are the registered and beneficial owner of the Land and that it had let out the Land to the defendants and 14 others. The defendants are alleged to have breached the "rental arrangement" by failing to pay the rental and agreed commission throughout the period since possession was given to the defendants and hence the present suit claiming, amongst others, for compensation for breach of the "rental arrangement". There is no mention at all of the company and that the plaintiff is challenging the sale of the Land to the company. To my mind, the dispute is clearly between the plaintiff and the defendants who are members of the plaintiff.

[18] As gathered from the pleadings and the affidavit evidence, the dispute between the plaintiff and the defendants is whether the Land was let out to the defendants as claimed by the plaintiff or whether the defendants were allowed as members to develop and cultivate the Land and having fully developed and cultivated the same be entitled to the transfer of the Land to them as contended by the defendants.

[19] Given the wide meaning accorded to the word "business" under s. 82 of the Act, the dispute is in my opinion clearly one touching on the business of the society.

[20] As the dispute is between the plaintiff, a co-operative society and the defendants, its members touching on business of the co-operative society, on the authority of M.Arulandan, Thanary, supra, it falls within the purview of s. 82 of the Act and therefore the dispute should be properly referred to the commission. In other words, the court is not the proper forum to try the dispute between the plaintiff and the defendants. The writ should accordingly be set aside.

[21] However, for completeness, I shall address some of the issues raised by the plaintiff to deflect the defendants' application herein.

Is s. 82 A Mandatory Provision?

[22] According to the plaintiff, on the authority of *MBF Finance Berhad v. Tee Kee Tat & 2 Ors* [1994] 4 CLJ 564 HC, s. 82 is neither mandatory nor conditions precedent before a suit can be filed in court. Neither does it provide for any time frame for

dispute to be referred to the Commission. All that s. 49 of the Co-operative Societies Act 1948 (which is similar to s. 82 of the Act) provides is for the need of a reference to be made to the commission and the commission may require the parties to refer the dispute to the court. It is submitted that the plaintiff had properly come to the court, a constitutional right accorded to both the plaintiff and the defendant

[23] I regret to say that the plaintiff is misconceived. The case of *MBF*, *supra*, in fact supports the defendants' application. This case involved a claim for repayment of debt due from the 1st respondent who was a member of the co-operative society while the 2nd and 3rd respondents were not but guarantors to the debt. This is what Siti Norma Yaakop J (as she then was) said in respect of the 1st respondent:

> As the appellant is a Co-Operative Society, the right to claim the debt due from its members, the 1st respondent and the principal borrower, is governed by section 49(1) of the Act which makes it mandatory for the appellant to refer the dispute over the debt to the Registrar-General. On receipt of such reference, the Registrar-General may, under subsection (2) of the same section, either
>
> (a) Decide the dispute himself;
>
> (b) Refer it for disposal to an arbitrator or arbitrators, or
>
> (c) Require the parties concerned to refer the dispute to a court.
>
> In his instance, the Registrar-General acted under section 49(2)(c) by issuing dated 4th April, 2987, directing the parties to refer the dispute to court.
>
> ...

[24] In *MBF*'s case, the learned judge admitted that at the time of filing the action, the appellant had no right to institute the action in the High Court as there was no reference yet to the Registrar-General under s. 82. Be that as it may, at the time of the trial, the Registrar-General had referred the case to the court, hence, the learned judge accepted the appellant's action opining that the time when the reference was made to the Registrar-General was immaterial.

[25] On the authority of *MBF*'s case, where a dispute involved members of the co-operative society touching on the business of a co-operative society, it is mandatory to refer the dispute to the commission who will then decided on the options under sub-s. (2). (See also: *Hj. Bujang Mohidin bin Jol & Ors v. Koperasi Koperkasa Bhd, supra.*

[26] Does the provision in s. 82(3)(c) preserve the jurisdiction of the court thereby allowing the plaintiff to invoke the jurisdiction of the High Court at first instance without referring the dispute to the commission? Learned counsel for the plaintiff argued that s. 82(3)(c) does not oust the jurisdiction of the court.

[27] With respect, I do not agree. Section 82(3)(c) is one of the three options as to how the dispute may be resolved. It is only where the commission has requested the parties to refer their dispute to court, will the claimants be clothed with the capacity to initiate an action in the High Court and the role of the High Court shall be at the second instance.

Whether Only The Minister Can Refer To The Tribunal

[28] It is also contended that from the clear wording in s. 83(1) only the Minister may refer the dispute to the Tribunal and that too on the recommendation of the commission. Further, the word "may" appear in "The Minister may" shows that it is not mandatory for the matter to be referred to the Tribunal.

[29] With respect, I do not agree. To my understanding, "The Minister may" appears in s. 83(1) of the Act, specifically refers to the Minister's power to establish Tribunal upon recommendation of the Registrar-General and has nothing to do with the Minister making referral of disputes to the tribunal.

Is The Tribunal Competent To Grant The Remedies Prayed For By The Plaintiff?

[30] For the plaintiff, it is submitted that the plaintiff is claiming specific relief, particularly a declaration that the plaintiff is the lawful and beneficial owners of the Land. This relief may only be granted by the court and it is beyond the jurisdiction of any tribunal. Hence, this matter must be heard by this court.

[31] In support of the above contention, reference was made to s. 41 of the Specific Relief Act 1941 to show that only the courts are seized with the jurisdiction grant declaratory relief. Cases relied on are *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177, *Loo Choo Teng & Anor v. Cheok Swee Lee & Ors* [2000] 2 CLJ 389 CA, *Chin Yew Loy Holdings Sdn. Bhd. v. Au Metalvest Malaysia Sdn. Bhd.* [2002] 6 CLJ 141, *Tan Chin Swee & Anor v. Seri Ampangan Realty Sdn. Bhd.* [2005] 1 CLJ 865 HC.

[32] In response to the above contention, learned counsel for the defendants submitted that Specific Relief Act 1950 and Court of Judicature Act 1964 are statute of general application providing for granting of specific performance, injunction and declaration by the High Court, Court of Appeal and Federal Court.

[33] It is next contended that in contrast, Co-operative Societies Act 1993 is a specific statute enacted by Parliament to regulate the affairs between co-operative societies and their members. It is trite that a specific statute will override and exclude the application of general statutes, citing *Public Prosecutor v. Mohd Amin & Ors* [2001] 1 CLJ 75 HC.

[34] Hence, counsel for the defendant contended, when a dispute arises between a co-operative society and its members which is touching he co-operative society, reference need not be made to the Specific Relief Act 1950 or the Court of Judicature Act 1964, which are general statues. One only has to refer to the Act.

[35] In my opinion, the fact that the plaintiff is seeking declaratory relief does not mean that the plaintiff can circumvent the requirement of referring the dispute to the commission under s. 82. I find support for my view in the following cases:

[36] In *M. Arulandan*'s case, *supra*, the plaintiff who was the manager of a co-operative society as well as a member of the same, filed an originating summons in the High Court asking for declaration that the purported disciplinary action against him was null and void and of no effect, and prayed for an order that his increment be restored. The co-operative society filed an application to strike out the manager's originating summons on, amongst others, the ground that the manager was a member and an officer of the co-operative society, hence the dispute brought

by the manager should have been referred to the Registrar of the Jabatan Pembangunan Koperasi (now the Commission). The High Court struck out the originating summons. The appeal to the Supreme Court was dismissed. It is to be noted that in *M. Arulandan*'s case, the Supreme Court had asked the manager to refer his dispute to the Registrar despite he was seeking for declaration.

[37] In *Thanaraj a/l Manikam*, *supra*, the plaintiffs were members of the co-operative society defendant. The co-operative society defendant had sold its land to the plaintiff by signing a number of memoranda of transfers. However, after signing them, the defendant failed to complete the sale or deliver the title deeds and the memoranda of transfer to the plaintiffs to enable the plaintiffs to effect registration of land into their names. Hence the plaintiff sued the defendant and sought the declaration that the defendant held the lands as trustee for the plaintiffs; and that the defendant whether by itself or by its officers, servants or agents, do deliver to the plaintiffs the title deeds for the lands together with the memoranda of transfer, as well as specific performance.

[38] The High Court ruled in favour of the defendant on the preliminary issue that the plaintiff being member of the defendant co-operative society, should have acted under s. 82(1) of the Act and referred their claims to the registrar of the Jabatan Pembangunan Koperasi (now the commission). It must be noted that despite the prayer for declaration and specific performance, Kang Kwee Kee J (as His Lordship then was) had asked the plaintiffs therein to refer their dispute to the Registrar.

[39] Further in *R Ramachandran*, *supra*, High Court was hearing an appeal from the decision of the co-operative tribunal. As an advice to the court, the Jabatan Pembangunan Koperasi wrote to and informed the court, amongst others, that the Tribunal has the power to grant declaration, even though the sessions court does not have such power. Hence, it is clear that the commission is aware of that and recognized that the Tribunal does have power to grant declaration.

[40] In my opinion, it is important not to equate a declaration or an order for specific performance or injunction with the Award of the Tribunal. The Award of the Tribunal is a creature of the Act

and is independent from the Specific Relief Act 1950 or the Courts of Judicature Act 1964. The Tribunal does not require any empowerment from these latter statutes to decide on the affairs of its own people.

Illegality

[41] The plaintiff next argued that the defendants' averment of purported facts in the affidavit in support impinges on fraud, forgery and/or illegality, and these issues may only be properly determined by a civil court and no tribunal could be seized with the jurisdiction to determine the same.

[42] This contention is akin to the contention that the tribunal is not seized with jurisdiction to grant the declaratory relief sought by the plaintiff. It is noteworthy that in the *Thanaraj* case, Kang Hwee Gee J (as His Lordship then was) set aside the action even though fraud was an issue due to the fact that the dispute was between the co-operative and its members touching on the business of the co-operative society.

Is There Ouster Of The Court's Jurisdiction?

[43] According to the plaintiff, the judicial power and jurisdiction of the court cannot and ought not be summarily dispensed with nor can it be ousted on filmy evidence or argument, citing *Dato Param Cumaraswamy v. MBF Capital Bhd & Anor* [1998] 1 CLJ 1 CA and *ISC Technology Sdn. Bhd. v. Premium Systems Technology Pte. Ltd* [2008] 7 CLJ 239 HC.

[44] In the *Dato Param Cumarasway* case, the court held that the power of the court cannot be simply excluded by treaty or municipal legislation, namely, the Convention on the Privileges and Immunities of the United Nations 1946 and the Diplomatic Privileges (United Nations and International Court of Justice) Order 1949, which are not Act of Parliament) and the Court's power to decide disputes between citizens of Malaysia cannot be excluded at pleasure.

[45] In *ISC Technology*'s case, the court held that the power of the court cannot be excluded by a clause in an agreement.

[46] I respectfully do not agree that ss. 82 and 83 have ousted the jurisdiction of the court. I find support in the case of *Koperasi Pekerja-Pekerja Stevedoring Pelabuhan Bhd, Ebnusama Bin Ali & Ors* [1996] MLJU 544, in which Ian Chin J (as he then was) examined whether s. 51(1) and (2) of the Co-operative Societies Ordinance No. 3 of 1958 (Sabah) (which has been repealed after the adoption of the Act by Sabah) which is in *pari materia* with s. 82 of the Act, had ousted the jurisdiction of the High Court, held that the intention of the legislature by enacting the provision of the Ordinance is to oust the jurisdiction of the High Court by providing for any "dispute touching the business of the society" to be referred to the Registrar of Co-operative Societies". He went on to say:

> Thus, if the dismissal of the Claimants is "a dispute touching on the business of the society", the claimants would be barred from initiating an action in the High Court to invoke its original jurisdiction because its original jurisdiction had been ousted (though not the power of judicial review (*Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Berhad v. Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335 CA). That in my view is clear in so far as the original jurisdiction of the High Court is concerned. Even if the jurisdiction of the High Court has not been ousted, it would appear that both the High Court ... have jurisdiction. Since the High Court has power of judicial review over the decision of the Registrar of Co-operative Societies, it means that the High Court is a court superior to that constituted by the office of the Registrar of Co-operative Societies or the arbitrator. That being the case, the matter must first be adjudicated upon by the lower court having jurisdiction. Therefore, the High Court would still be entitled to decline jurisdiction and to hold that the jurisdiction of the lower court must be resorted to first. This is so far as the High Court is concerned ...

[47] In my opinion, there is no ouster of court's jurisdiction. Pursuant to s. 82 of the Act, if the court finds that the dispute is between members of a co-operative society, or between members of a co-operative society and the co-operative which touches on the business of the Co-operative society, the role of the court pertaining to dispute in such instances shall be at the second instance when the dispute is referred to it by the commission or when there is an appeal against the award of the Tribunal.

A

Waiver And Estoppel

[48] The plaintiff further contended that the parties had at the meeting held on 1 August 2008, agreed, amongst others, to refer the matter to the court for its determination. At no time did the
B parties or the defendants mention anything about referring the matter to the Tribunal. The defendants are now estopped from saying that the court has no jurisdiction, having thus agreed.

[49] The short answer to this contention is that if there is any
C such agreement, which the defendants denied, the parties cannot agree and contract something which is against the law, namely, the Act.

D

E

F

G

H

I